

**VOLUNTARY CLEANUP CONTRACT  
13-6160-NRP**

**IN THE MATTER OF  
TURKY'S TOWING AND AUTO SITE, CHARLESTON COUNTY  
and  
FLOURNOY DEVELOPMENT COMPANY, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Flournoy Development Company, LLC with respect to the Property located at 19 Folly Road, 25 Folly Road, and 35 Folly Road, Charleston, South Carolina. The Property includes approximately 5.39 acres identified by Tax Map Serial Number 4211100057, TMS 4211100058, and TMS 4211100063. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of January 11, 2013, and any amendments thereto, by Flournoy Development Company, LLC, which is incorporated into this Contract and attached as Appendix A.

**AUTHORITY**

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710 et. seq. (as amended); the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq. (as amended), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq., and the South Carolina Pollution Control Act, § 48-1-10 et. seq.

**DEFINITIONS**

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §44-56-710 et. seq. (as amended), and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq. (as amended), the S.C.

Pollution Control Act, S.C. Code Ann. § 48-1-10, et. seq. (as amended), the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq. (as amended) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et. seq.

- A. "Flournoy Development" means Flournoy Development Company, LLC.
- B. "Beneficiaries" means Flournoy Development's Non-Responsible Party members, lenders, signatories, parents, subsidiaries, successors and assigns, including new purchasers, lenders, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site
- C. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination present on, or under, the Property as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of Flournoy Development or its Beneficiaries.

- H. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause Contamination upon release to the environment.
- I. "Site" means all areas where a contaminant has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA section 101 (28).
- J. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

## FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. Owners and Operators: The owners and operators of the Property include the following:

### TMS 4211100057 – 35 Folly Road

Golds Gym (operator)	2008 to 2010
Bennett Chiropractic Center (operator)	2001 to 2010
Albemarle Associates of Mount Pleasant, LLC	2005 to Present
LifeQuest (operator)	1994 to 2008
Albemarle Associates, a South Carolina Partnership	1990 to 2005

Wickes Corporation / Wickes Lumber Company	1965 to 1990
Ross Socar Realty Corporation	1964 to 1965
CSX Transportation Inc. (as successor to Atlantic Coast Line Railroad Company, A Corporation)	Prior to 1964
Wagner Lumber Company	1940 to 1964

TMS 4211100058 – 25 Folly Road

Werner G. Burky	1997 to Present
ELF Partnership	1988 to 1997
Ashley Tire, Inc. (dissolved 1991)	
Hay Oil Company, Inc. (dissolved 1988)	1964 to 1988
CSX Transportation Inc. (as successor to Atlantic Coast Line Railroad Company, A Corporation)	Prior to 1964

TMS 4211100063 – 19 Folly Road

Werner G. Burky	2001 to Present
Albemarle Properties, LLC	1998 To 2001
Philip A. McGowan, Arthur H. Applegate, The Michael J. Brickman Family Limited Partnership, and Terry E. Richardson, Jr.	1998
Ashley Landing, Inc.	1994

- B. Property and Surrounding Areas: The Property is at the intersection of Folly Road (north) and Albemarle Road (west). The Highway 17 overpass is to the north, the Ashley River is to the east, a medical office and residences are to the south, and Albemarle Road runs along the western Property boundary.

When the SC 61 Connector was constructed, the configuration of TMS 063 was altered so that the parcel has been reduced. A Comet gas station was located at

19 Folly Road on what was then TMS 063. The Comet gas station operated from 1942 until 1970 and consisted of at least two gasoline tanks and three dispensers. A petroleum release was reported at this location in 1992. The Department granted a "no further action" for that release in 1996. Currently the parcel is vacant land used for parking and automobile storage.

From the 1940s to the 1980s, a bulk fuel distribution business, identified as Hay Oil Company, was located on TMS 058. Ashley Tire and Battery has also operated on this parcel. The TMS 058 parcel has been used for a retail gas station, automotive service businesses, an oil warehouse, and U-Haul rental. Currently TMS 058 is developed with two structures and has been Turkey's Towing and Auto from about 1993. There are three hydraulic lifts inside the building's service bays. A November 1963 plat for Atlantic Coast Line Railroad Company depicts marsh on 0.1 acre of this parcel.

In 1989, the Hay Oil Company/ELF Partnership registered nine underground storage tanks (USTs) and the Department issued them UST permit number 01888. In December 1991 the Department confirmed a release at the site; and in 1992 the Department confirmed that the release was eligible to receive funds from the State Underground Petroleum Environmental Response Bank (SUPERB) Account. The USTs were removed in February 1993. As part of that tank removal activity, the UST basins were over excavated and impacted soil removed for off-site treatment. The ELF Partnership requested the Department's UST Management Division to handle site rehabilitation activities on their behalf. Monitoring wells were initially installed in 1993; however, due to site construction activities, several monitoring wells have been lost. A replacement well MW-2R was installed in June 2011. Groundwater samples were last collected from five monitoring wells in June 2011. The existing monitoring wells are scheduled to be sampled in February 2013 and

again in September 2013 to determine if the levels of petroleum chemicals of concern are increasing, decreasing, or remain the same.

According to aerial photographs and Sanborn Fire Insurance Maps, TMS 057 was developed prior to 1954. A 1973 aerial depicts a main building along with a railroad spur originating from the southeast. The parcel was used as a retail lumber yard with an office building, sheds, and a building with sections labeled as tractor repair and paint storage. By 1983, a lumber storage shed and another shed are depicted while the railroad spur is no longer visible on the parcel. Some asphalt paving has been removed even though vehicle parking has been allowed on several sides of the buildings. The current building appears to have been constructed prior to 1964. TMS 057 has been used as a lumber company, fitness center, gym and chiropractic office. There are three pole-mounted transformers, which are labeled Non-PCB. Drainage ditches are located along the east, south and western property boundaries. A petroleum release was reported on TMS 057 in 1991; the Department granted a "no further action" for that release in 1996.

- C. Investigations / Reports: *A Phase I Environmental Site Assessment*, dated July 18, 2012, prepared by S&ME Inc. was submitted with the Application. This Phase I is specific to TMS 057. Although the UST release was noted, it was not identified as a recognized environmental condition (REC) because a "no further action" had been granted by the Department. No onsite RECs were identified. The UST release at the adjacent parcel TMS 058, previously the Ashley Tire and Battery Site now Turkey's Towing & Auto, was considered an offsite REC.

*A Phase I Environmental Site Assessment*, dated December 18, 2012, prepared by S&ME, Inc. was also submitted with the Application. This December Phase I is specific to TMS 058 and TMS 063. The historical use of TMS 058 along with the documented petroleum release are considered onsite RECs. A heating oil above

ground storage tank (AST), a pipe beside the AST, three hydraulic lifts inside the bays are also considered onsite RECs. As for TMS 063, the former Comet gas station is considered a REC because it is unknown whether all the USTs have been removed.

*A Report of Groundwater Sampling and Chemical Analysis*, dated June 15, 2011, prepared by Midlands Environmental Consultants, Inc., was submitted to the Department's Underground Storage Tank Program regarding the petroleum release on TMS 058. The release occurred when Ashley Tire and Battery occupied the parcel. According to that report, petroleum products, namely benzene, toluene, ethylbenzene, total xylenes, methyl-tertiary-butyl Ether (MTBE) and naphthalene have been detected in groundwater at concentrations greater than their respective maximum contaminant levels (MCLs). Groundwater flow was determined to be to the east toward the Ashley River. The Report concludes that the extent of the groundwater plume has not been defined offsite.

- D. Applicant Identification: Flournoy Development is a Georgia limited liability company with its principal place of business located at 900 Brookstone Centre Parkway, Columbus, Georgia 31904. Flournoy Development is parent of Flournoy Construction Company, LLC and Flournoy Properties, LLC. Flournoy Development affirms that it has the financial resources to conduct the response action pursuant to this Contract.
- E. Proposed Redevelopment: Flournoy Development will acquire the Property and intends to develop approximately 300 multi-family units on about 3.4 acres fronting Albemarle Road. The development will include community features such as structured parking, a swimming pool, clubhouse, and fitness center. Potentially 1.35 acres will be donated to the city for a community park. Flournoy Development

anticipates the creation of seven (7) permanent jobs with an increase to the tax base projected to be \$300,000.00.

### BONA FIDE PROSPECTIVE PURCHASER STATUS

3. Flournoy Development certifies that it and its members are not a current owner of the Property, or parent, successor or subsidiary of a current or past owner of the Property; are not a Responsible Party for the site, or a parent, successor or subsidiary of a Responsible Party for the site; and have not had any involvement with the Property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program. Flournoy Development also certifies that it and its members are eligible to be a Bona Fide Prospective Purchaser for the Property.

### RESPONSE ACTION

4. Flournoy Development agrees to conduct the response actions specified in the subparagraphs below. An initial Work Plan shall be submitted by Flournoy Development, or its designee, within thirty (30) days after the date of execution of this Contract by the Department, or such earlier or later date if approved by the Department's project manager. A Report of the assessment results shall be submitted by Flournoy Development, or its designee in accordance with the schedule provided in the initial Work Plan. Flournoy Development acknowledges that the assessment may find distributions of Existing Contamination requiring additional assessment and/or corrective action on the Property that cannot be anticipated with this Contract. Flournoy Development agrees to perform the additional assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Contract; however, Flournoy Development may seek an amendment of this Contract to clarify its further responsibilities. Flournoy Development shall perform all actions required by this Contract, and any related actions of Flournoy Development's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and corrective action activities detailed herein.
- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). Flourney Development shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 5). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or corrective measures activities consistent with the following:
  - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
  - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with 25 S.C. Code Ann. Regs. R.61-71, the South Carolina Well Standards. The Work Plan shall provide sufficient detail to support issuance of the well approvals by the Department.
  - c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:
    - i. the full EPA Target Analyte List (TAL);
    - ii. EPA Target Analyte List excluding cyanide (TAL-Metals);

- ii. the full EPA Target Compound List (TCL);
    - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);
    - ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);
    - iii). EPA Target Compound List Pesticides (TCL-Pesticides);
    - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).
  - iii. Petroleum products, such as benzene, toluene, ethylbenzene, total xylenes (BTEX) plus methyl-tertiary-butyl ether (MTBE), naphthalene, and elthylene dibromide.
- d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL for soil samples shall be the "MCL-Based SSL", if listed. If the applicable screening criteria are lower than achievable detections levels, the analytical method shall use the lowest achievable detection levels.
- 6). The Work Plan shall include the names, addresses, and telephone numbers of Flournoy Development's consulting firm(s), analytical laboratories, and Flournoy Development's contact person for matters relating to this Contract and the Work Plan.
- a). The analytical laboratory shall possess applicable Certification defined in 25A S.C. Code Regs. R.61-81, for the test methods specified in the Work Plan.

- b). Flournoy Development shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the Work Plan.
- 7). The Department will notify Flournoy Development in writing of approvals or deficiencies in the Work Plan.
- 8). Flournoy Development, or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
- 9). Flournoy Development shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
- 10). Flournoy Development shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 11). Flournoy Development shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. Flournoy Development shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

**B. Report Logistics**

- 1). Report(s) shall be prepared in accordance with accepted industry standards and shall be certified by signature and seal of a Professional Engineer or

Professional Geologist duly licensed in South Carolina.

- 2). The Report(s) of assessment and/or corrective measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. The Report shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs, sample descriptions, field screening results, and all laboratory analytical data.
- 3). All Report(s) shall be submitted to the Department in the form of one hardcopy and one electronic copy of the entire Report on a compact disk (in .pdf format). A copy of each Report shall be submitted on compact disk (in .pdf format) to the Department's UST Management Division. The Report(s) shall reference UST Permit number 01888.

C. Assess Waste Materials and Segregated Sources:

- 1). Flournoy Development shall characterize all Waste Materials and Segregated Sources identified below. Assessment shall include an evaluation of contaminant concentrations and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable, or as specified below.
  - a). Out of service heating oil AST behind the Turkey's building;
  - b). Containers of spent hydraulic oil / used oil;
- 2). Flournoy Development shall also characterize any other Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, corrective action, or development activities in accordance with a Department approved plan.
- 3). Upon discovery of any Segregated Source that has not yet released all contents to the environment, Flournoy Development shall expeditiously stabilize or remove the Segregated Source from the Property
- 4). Flournoy Development shall immediately notify the Department if a release of

Contamination occurs as a result of its assessment, stabilization or removal actions. Flourney Development shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). Flourney Development shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). Flourney Development shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to Flourney Development, of the well owner or occupant of the residence served by the well.

E. Assess soil quality across the Property:

- 1). Flourney Development shall collect and analyze a minimum of nineteen (19) soil samples from ten (10) locations on the Property. Flourney Development shall collect one surface soil sample (0-1 foot below ground surface) and one subsurface soil sample (2 foot minimum depth) from each of the following locations, unless specified otherwise:
  - a). A presumed background location, a surface soil sample to be analyzed for inorganics;
  - b). At the northwestern corner of the Turkey's warehouse (front) near the bay where rinse water from activities in the work shop collect;
  - c). At the out-of use AST at the rear of Turkey's building, on the east side of warehouse;
  - d). Three locations under the Turkey's building: two locations specific to the historical auto repair portion of the building;

- e). A location on TMS 063, which may coincide with the monitoring well location.
  - f). A location on TMS 057 where the tractor repair and paint shop were located according to the 1955 Sanborn, southern side of building.
  - g). Two other locations on TMS 057.
- 2). Unless otherwise specified above, each surface soil sample shall be analyzed for TAL-Metals and SVOCs. Each subsurface sample shall be analyzed for TAL-Metals, VOCs and SVOCs. A minimum of one (1) surface and one (1) subsurface sample from a probable impacted area from TMS 058 shall be analyzed for the full EPA-TAL and EPA-TCL.
  - 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

F. Assess groundwater quality:

- 1). Flournoy Development shall assess groundwater quality and determine the direction of groundwater flow direction across the Property. Assessment shall include samples from certain existing monitoring wells and a minimum of three (3) new monitoring wells installed to bracket the water table. Specific locations shall be as follows:
  - a). On TMS 058 existing monitoring well MW-2R;
  - b). On TMS 058 existing monitoring well MW-04 near the former bulk tank storage area;
  - c). On TMS 063 at the location of the westernmost former Comet gas station tank adjacent to Folly Road;
  - d). On TMS 057 where the tractor repair and paint shop were located according to the 1955 Sanborn, southern side of building;
  - e). On TMS 057 near the southern Property boundary for background data.
- 2). Samples from all groundwater monitoring wells shall be analyzed for TAL-Metals, VOCs and SVOCs. In addition, the groundwater sample from existing MW-2R shall be analyzed for the full TAL/TCL parameters.

- 3). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, or, if not specified in R.61-58, to the Regional Screening Tables values for "Tapwater."

G. Assess Sediment and Surface water quality:

- 1). Flournoy Development shall collect and analyze a minimum number of sediment and surface water samples, if present, from water bodies on the Property. The samples shall be collected as:
  - a). Two (2) sediment and corresponding water samples from the sample location at the most downgradient portion of the drainage ditches on the southern and eastern Property boundaries.
- 2). All surface water and sediment samples shall be analyzed for the TAL-Metals, VOCs and SVOCs.
- 3). Surface water quality results shall be compared to the values in the SC Water Classifications and Standards, R.61-68, based on consumption of either "water and organisms" or "organisms only" as applicable for the water body. Sediment samples shall be compared to the Ecological Screening Values in EPA Region 4 Ecological Risk Assessment – Supplement to RAGS.

H. Evaluate and control potential impacts to indoor air:

- 1). Flournoy Development shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting residential exposures consistent with the building construction proposed to be used on the Property.
- 2). Flournoy Development's evaluation shall, unless otherwise agreed to by the

Department, consist of collection and analysis of a minimum number of soil gas samples from the proposed footprint of buildings to be constructed on the Property over areas potentially subject to Vapor Intrusion. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a  $10^{-6}$  risk for shallow gas samples (using an depth-appropriate attenuation factor). The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.

- 3). The Department may allow Flournoy Development to implement vapor intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 4). Flournoy Development shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the predicted indoor air concentration exceeds a  $10^{-6}$  risk calculated for residential exposure. The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

I. Institute reasonable Contamination control measures:

- 1). Flournoy Development shall stabilize or remove from the Property any Segregated Sources of Contamination that have not yet released all contents to the environment.
  - a). The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
  - b). Flournoy Development shall document the characterization results and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

2). Flournoy Development shall take reasonable measures to limit or prevent human exposure to Existing Contamination on the Property:

a). Corrective measures shall be required for Waste Materials and Contamination present in any media on the Property with concentrations in excess of appropriate human-health and ecological risk-based exposure standards with plausibly complete routes of exposure.

i. Flournoy Development may request Department approval to conduct a site-specific risk assessment to determine levels of Contamination that are acceptable for the intended use of the Property. The risk assessment shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, Flournoy Development shall submit for Department approval, an overview of risk assessment assumptions including identification of contaminant exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed to complete the risk assessment.

ii. Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination. The corrective measures shall be proposed in a Corrective Measures Plan to be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.

iii. Upon completion of any corrective measures, Flournoy Development shall provide a Corrective Measures Report to document satisfactory completion of the corrective measures for Department review and approval prior to obtaining a Certificate of Completion.

J. Monitor and/or abandon the monitoring wells:

1). Flournoy Development shall implement a groundwater-monitoring program if

required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to Contamination.

- 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 3). Flournoy Development shall abandon the monitoring well(s) installed pursuant to this Contract when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.
- 4). Flournoy Development will provide access to the Department's UST Management Division and to site rehabilitation contractors hired by that Division to continue remedial activity on the Property. Remedial activity may include screening groundwater samples, the installation of monitoring wells, and the collection of groundwater samples for analysis to define the extent of petroleum impact on the Property.
- 5). Flournoy Development shall provide 90 days prior notice to the Department's UST Management Division of the need to abandon existing monitoring wells (MW-1, MW-2R, MW-3, MW-4 and/or MW-6). That Division will abandon the monitoring wells at no cost to Flournoy Development if proper notice is given. However, Flournoy Development may be responsible for costs associated with the installation of replacement monitoring well(s) on the Property if the UST Management Division finds it necessary to replace the abandoned well(s) in order to monitor the petroleum impact.

#### HEALTH AND SAFETY PLAN

5. Flournoy Development shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan shall be submitted to the

Department in the form of one electronic copy on compact disk (in .pdf format). Flournoy Development agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Flournoy Development.

#### PUBLIC PARTICIPATION

6. Flournoy Development and the Department will encourage public participation to implement this Contract as follows:
  - A. The Department will provide notice, seek public comment, and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. Code Ann. §44-56-750 upon signature of this Contract by Flournoy Development.
  - B. Flournoy Development shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.
    - 1). The sign will state "Voluntary Cleanup Project by Flournoy Development under Voluntary Cleanup Contract 13-6160-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of Flournoy Development. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
    - 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.

- 3). Flournoy Development shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). Flournoy Development agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). Flournoy Development shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, Flournoy Development shall restore the sign within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

#### PROGRESS UPDATES

7. Flournoy Development shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within one hundred twenty (120) days of the execution date of this Contract and semi-annually thereafter. The obligation to submit updates under this Paragraph will terminate when the Department issues a Certificate of Completion.
  - A. The updates may be in summary letter format, but should include information about:
    - 1). The actions taken under this Contract during the previous reporting period;
    - 2). Actions scheduled to be taken in the next reporting period;
    - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
    - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

- B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

#### SCHEDULE

8. Flournoy Development shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. Flournoy Development shall implement the interim measures in accordance with a Department-approved plan.

#### DECLARATION OF COVENANTS AND RESTRICTIONS

9. Flournoy Development or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property if Contamination exceeds levels acceptable for unrestricted use after completing the response actions pursuant to this Contract. Contaminant levels acceptable for unrestricted use shall be the Screening Levels for Resident Soil as specified in the EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites for soil, and the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, R.61-58 for groundwater. The recorded Declaration shall be incorporated into this Contract as an Appendix and shall be implemented as follows:
- A. The Department shall prepare and sign the Declaration prior to providing it to Flournoy Development. An authorized representative of Flournoy Development or its Beneficiaries shall sign the Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.

- B. Flourney Development or its Beneficiaries shall record the executed Declaration with the Registrar of Deeds or Mesne Conveyance for the county where the Property is located.
- C. Flourney Development or its Beneficiaries shall provide a copy of the recorded Declaration to the Department within sixty (60) days of the Department's execution. The copy shall show the date and Book and Page number where the Declaration has been recorded.
- D. In the event that Contamination exceeds levels acceptable for unrestricted use (Regional Screening Levels for residential use) on a portion of the Property, Flourney Development or its Beneficiaries may create a new parcel of that portion of the property that will be subject to the Declaration.
- E. The Declaration shall be noted on the master deed of any planned development for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Declaration.
- F. The Declaration shall reserve a right of entry and inspection for Flourney Development or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
  - 1). Flourney Development or its Beneficiaries shall ensure that the restrictions established by the Declaration remain on any subdivided property.
  - 2). Flourney Development or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.

- G. The Declaration shall provide that the Department has an irrevocable right of access to the Property after Flournoy Development acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized representatives and all persons performing response actions on the Property under the Department's oversight.
- H. Flournoy Development or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration to the Department. The report shall be submitted by May 31<sup>st</sup> in a manner and form prescribed by the Department.
- I. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation and such amendment to the Declaration shall not prohibit the then current use of the Property. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.

#### NOTIFICATION

10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the Contract. Notices by electronic mail or facsimile shall be acceptable if

acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

A. All correspondence, notices, work plans, and reports shall be submitted to:

Jo Cherie Overcash, Hydrogeologist  
Bureau of Land and Waste Management  
2600 Bull Street  
Columbia, South Carolina 29201

B. All correspondence and notices to Flournoy Development shall be submitted to Flournoy Development's designated contact person who as of the effective date of this Contract shall be:

Flournoy Development Company, LLC  
Ryan Foster, Vice President  
900 Brookstone Centre Parkway  
Columbus, Georgia 31904

#### FINANCIAL REIMBURSEMENT

11. Flournoy Development or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as

provided by S.C. Code Ann. §44-56-750 (D). The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract and incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to Flourney Development on a quarterly basis. All costs are payable within thirty (30) days of the Department's invoice submitted to:

Flourney Development Company, LLC  
Ryan Foster, Vice President  
900 Brookstone Centre Parkway  
Columbus, Georgia 31904

- A. Failure to submit timely payment for costs upon receipt of the Department's invoice is grounds for termination of the Contract pursuant to paragraph 16 herein.
- B. Payment for costs incurred by the Department pursuant to this Contract shall become immediately due upon termination of the Contract by any party pursuant to paragraph 16 herein.

#### ACCESS TO THE PROPERTY

- 12. Flourney Development agrees the Department has an irrevocable right of access to the Property for environmental response matters after Flourney Development acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight. Access shall not be denied during normal business hours or at any time in the case of an environmental emergency or imminent threat situation, as determined by the Department.

### CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion shall be issued to Flournoy Development or its Beneficiaries for the Property under this Contract as follows:

- A. Flournoy Development or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. Pursuant to S.C. Code Ann. § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that Flournoy Development or its Beneficiaries has successfully and completely complied with the Contract and the voluntary cleanup approved under S.C. Code Ann. § 44-56-710 through 760 (as amended).
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been recorded but all actions under this Contract have not been completed due to Property-specific circumstances.
  - 1). A Provisional Certificate of Completion will include specific performance standards that Flournoy Development or its Beneficiaries shall continue to meet.
  - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if Flournoy Development or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the

Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14. Flournoy Development or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two (2) years after redevelopment of the Property is complete. Flournoy Development shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

CONTRACT OBLIGATIONS AND PROTECTIONS INURE

15. The terms, conditions, obligations and protections of this Contract apply to and inure to the benefit of the Department, Flournoy Development, and its Beneficiaries as set forth below. The following stipulations apply to ensure the transition of all obligations and protections to successive Beneficiaries for any portion of the Property:
- A. Flournoy Development or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
  - B. Flournoy Development and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property allowing residential occupancy.
  - C. If the Certificate of Completion has not been issued, Flournoy Development or its Beneficiaries shall request approval from the Department prior to transferring the

obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract documenting that the new person or entity:

- 1). Is not a Responsible Party for the Site;
- 2). Has sufficient resources to complete the activities of this Contract;
- 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract,
- 4). Will assume the protections and all obligations of this Contract and,
- 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, Flournoy Development or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract and the Declaration, and that it will assume the ongoing obligations and protections of this Contract.
- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential or commercial use provided the Declaration is noted on the master deed for the planned development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

E. If a Certificate of Completion has been issued and the Property is not subject to a Declaration or other continuing obligation pursuant to this Contract, no notification is

required.

#### CONTRACT TERMINATION

16. Flournoy Development, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

A. The Department may not terminate this Contract without cause and before termination, shall provide Flournoy Development or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms and conditions of this Contract;
- 2). Change in Flournoy Development's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of Flournoy Development or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by Flournoy Development or its Beneficiaries;
- 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by Flournoy Development or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,
- 7). Failure by Flournoy Development or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of Flournoy Development's or its

Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

- B. Should Flournoy Development or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed by Flournoy Development or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.
- C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.
- D. Termination of this Contract by any party does not end the obligations of Flournoy Development or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, , and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated in actions giving rise to termination of the contract. The protections will continue for any party who has received protections through a Certificate of Completion or Provisional Certificate of Completion, if applicable, for this Contract, and who did not participate in the actions giving rise to the termination.

#### ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. Flournoy Development and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
- 1). Protection from contribution claims under CERCLA Section 113.42 U.S.C. § 9613 and § 44-56-200, et seq.
  - 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
  - 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.
- B. Effective on the date the Certificate of Completion is issued by the Department.
- 1). The Department's covenant not to sue Flournoy Development and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by Flournoy Development or its Beneficiaries.
  - 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.
- C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by Flournoy Development or its Beneficiaries. The Department retains all rights under State and Federal laws to compel Flournoy Development and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by Flournoy Development or its Beneficiaries.

#### RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than Flournoy Development and its Beneficiaries. The Department reserves the right to undertake

future response actions at the Site and to seek to compel parties, other than Flournoy Development and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

#### RESERVATION OF RIGHTS BY FLOURNOY DEVELOPMENT

19. Flournoy Development retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. Flournoy Development and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute to the Property. However, Flournoy Development and its Beneficiaries agree to undertake the requirements of this Contract.

#### BURDEN OF PROOF

20. Flournoy Development and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by Flournoy Development or its Beneficiaries. Flournoy Development and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

#### LIMITATION OF CLAIMS BY FLOURNOY DEVELOPMENT AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, Flournoy Development and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the

Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

REQUEST FOR STATUS OF THE CONTRACT

22. If requested by any non-responsible party member, lender, successor, or new purchaser, the Department will confirm the status of the work under this Contract.

**[Remainder of page left blank]**

SIGNATORS

23. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL**

BY:

DATE:

\_\_\_\_\_  
Daphne G. Neel, Chief  
Bureau of Land and Waste Management

DATE:

\_\_\_\_\_  
Reviewed by Office of General Counsel

**FLOURNOY DEVELOPMENT COMPANY, LLC**

BY:

DATE:

\_\_\_\_\_  
Ryan Foster, Vice President

# APPENDIX A

Flournoy Development Company, LLC

Application for Non-Responsible Party Voluntary Cleanup Contract

January 11, 2013